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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Price Cap Performance Review
for Local Exchange Carriers

CC Docket No. 94-1

COMMENTS OF AT&T

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May 9, 1994

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SUMMARY

Overall, the Commission's incentive regulation plan for local exchange carriers ("LECs") represents a substantial improvement over rate-of-return regulation of those carriers, and thus should be retained as a regulatory model. The Commission's adoption of LEC price caps has resulted in interstate access rates \$1.5 billion lower than at the inception of the LEC price cap plan, while providing incentives to the LECs to become more efficient, productive and innovative. The structure of the price cap plan should therefore be retained, but some provisions should be modified to make it even more effective in stimulating increased LEC productivity and in generating lower rates and improved service for access customers.

As shown in Part I, it would be premature for the Commission now to consider relaxing its price cap regulation of the LECs, or to establish criteria for future streamlining of LEC price cap requirements, on the basis that the local exchange is now, or soon could be, competitive. The simple fact is that the LECs still retain their monopoly control over the local exchange, and this is unlikely to change in the immediately foreseeable future.

Specifically, competitive access providers ("CAPs") serve only a tiny percentage of the total access market and account for less than 2 percent of total

access revenues. Moreover, wireless technologies and cable telephony, which are often cited as potential competitors to LEC access, are also currently incapable of providing a viable alternative to the landline telephone network dominated by the LECs. Finally, the Commission's expanded interconnection initiatives, although beneficial, are limited to transport services and do not address other elements of exchange access services.

Against this background, there is no need for the Commission now to delineate the criteria by which it would measure local exchange competition in the future. Instead, the Commission should support regulatory changes that will assist in determining whether such competition is feasible in the first instance. In this regard, AT&T has identified nine specific steps (such as elimination of state franchise and right-of-way restrictions, unbundling of basic network functions, and establishing local number portability) that should be taken to create the essential conditions for testing local exchange competition. In the event that such competition thereafter develops, the Commission can then consider appropriate measures of the viability of competition and how best to modify the LEC price cap plan and other regulatory structures as a consequence.

Part II shows that the LEC price cap plan should be retained in structure, but should be revised in certain respects to achieve more fully the Commission's objective of just and reasonable rates. Foremost among these changes is modifying the LECs' current 3.3 percent productivity offset (the "X" factor in their price cap equation) to reflect the LECs' higher historical achieved productivity and their performance since adoption of the LEC price cap plan. These Comments demonstrate that, in the past four price cap periods for which data are available, the LECs have achieved an aggregate productivity of 5.97 percent -- almost identical to the 5.9 percent historic productivity shown in Docket 87-313. Accordingly, absent other related modifications to the LECs' price cap formula, their productivity offset should be set at 5.47 percent, which represents their achieved historic productivity reduced by a .5 percent "productivity dividend" to encourage further LEC efficiency and innovation.

Further, the Commission should eliminate the "Balanced 50/50" formula for determining the LECs' common line cap, which does not accurately track changes in common line costs and thus has provided the LECs an unintended windfall. In addition, contrary to the Commission's original expectation, this formula has failed to stimulate the growth of common line minutes. The "Balanced 50/50" formula should therefore be replaced

with a per line formula that provides an appropriate incentive to reduce common line rates. If this change is implemented, the LECs' required productivity offset (including the productivity dividend) can be reduced to 4.63 percent.

Additionally, the Commission should modify the current sharing mechanism by imposing a one-time reduction in the LECs' price caps to account for the lower cost of capital since those carriers' reference return was last established in 1990. A discounted cash flow analysis reflects a 132 basis point reduction in the LECs' cost of capital for 1991 through 1993, half of which has not been reflected in changes in the Gross National Product Price Index ("GNP-PI"). Implementing such a reduction in the LECs' price caps would warrant a further reduction of .55 percent in the LECs' revised productivity offset. Further, the Commission should eliminate the lower formula adjustment, which experience has shown is superfluous and disservices the objectives of incentive regulation.

Finally, the Commission should implement measured corrections to the structure of baskets and bands to assure that the LECs consistently assign new rate elements to service categories and subcategories, and to require clear and convincing cost justification by the LECs for geographic pricing differentials. As part of the latter relief, the Commission should adopt an

overall "low density index," analogous to AT&T's residence index, for LEC zone density rates. Further, to maintain the LECs' efficiency incentives, the Commission should expand its current definition of exogenous cost changes to require such treatment for (a) fully amortized equal access and network reconfiguration ("EANR") expenses, and (b) cost changes associated with the sale of high cost local exchanges by price cap LECs.

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COMMENTS OF AT&T

Pursuant to the Commission's Notice of Proposed Rulemaking,¹ AT&T Corp. ("AT&T") hereby submits its comments with respect to the performance review of price cap regulation for local exchange carriers ("LECs").

INTRODUCTORY STATEMENT

The NPRM commences the "scheduled fourth year review of the LEC price cap plan." NPRM, ¶ 4. The "basic purpose" of the review is "to consider whether the plan should be revised to better serve the goals of the Communications Act," pursuant to "a comprehensive examination of the effects of price cap regulation using all available data and information." Id., ¶¶ 4, 9.

¹ Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Notice of Proposed Rulemaking, released February 16, 1994 ("NPRM").

The Commission has organized this inquiry around three interrelated sets of questions: two "general" issues concerning the overall effects of LEC price caps and "whether the goals of price caps should be refined" (NPRM, ¶ 5); a set of "transition" issues concerning the possibility of more fundamental changes that could be occasioned by the need for "reduced or streamlined regulation of LEC services as competition grows" (id., ¶ 7); and a set of "baseline" issues "raising questions of whether to revise the current plan to improve its performance or to adjust" the specific price cap operational formulas and rules in light of the actual LEC experience over the past three years (id. ¶ 6).²

As to the two initial "General Issues," the NPRM inquires about "the effect of the price cap plan on consumer welfare, the economy, and the creation of jobs both in telecommunications and in other sectors of the economy,"³ and whether the Commission should "revise the goals of the LEC price cap plan so that the plan may

² To assist the Commission and interested parties, Appendix A identifies the pages of these Comments that address particular issues raised in the NPRM.

³ NPRM, ¶ 34 (General Issue 2).

better achieve the purposes of the Communications Act and the public interest. . . ."⁴

On the whole, the LEC price cap system of incentive regulation has been a significant improvement over rate-of-return regulation, exactly as anticipated by the Commission (and supported by AT&T and others) at the time price cap regulation was adopted.⁵ As the NPRM (§ 12) notes, an econometric study submitted by AT&T predicted that price cap regulation of interexchange carriers would result in increased economic growth and jobs, on the assumption that it would yield rates lower than rate-of-return regulation.⁶ The NPRM solicits comments on whether similar results have occurred with respect to the LECs (id., § 33), and there is reason to believe that they have, at least to some degree. The fact that the LEC interstate access rates are \$1.5

⁴ Id., § 34 (General Issue 1).

⁵ See Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd. 6786, 6789-91 (1990) ("LEC Price Cap Order"), recon. 6 FCC Rcd. 2637 (1991) ("LEC Price Cap Reconsideration Order"), further recon. 6 FCC Rcd. 4524 (1991), second further recon. 7 FCC Rcd. 5235 (1992), aff'd sub nom. National Rural Telecommunications Association v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

⁶ See "The Impact on the U.S. Economy of Regulatory Changes in the Interstate Long Distance Telecommunications Market," Wharton Econometric Forecasting Associates, submitted as Appendix E, Comments of AT&T, CC Docket No. 87-313, submitted Oct. 19, 1987.

billion lower than they were at the beginning of price cap regulation is one general indication that price caps have had the desired effect of lowering rates for those who rely on telecommunications services. See NPRM, ¶ 25. Yet, as discussed below (Part II, *infra*), the full potential benefit to the economy, to the labor market, and to customers, will not be realized unless price cap regulation succeeds in reducing interstate access charges to more competitive levels at a rate commensurate with the LECs' rapid productivity advances.

To achieve these results, the original goals of the price cap plan -- "just, reasonable, and nondiscriminatory rates, as well as a communications system that offers innovative, high quality services"⁷ -- should continue to guide the Commission. Price cap regulation has been successful in reducing rates for consumers without painfully protracted regulatory proceedings, while simultaneously providing the LECs increased incentives to become more efficient, productive and innovative. Indeed, if the LEC price cap plan is appropriately modified, price cap regulation has the potential to be even more effective in increasing productivity, creating jobs, and providing better service to more users at lower rates.

⁷ LEC Price Cap Order, 5 FCC Rcd. at 6787.

The balance of these comments responds to the two other sets of issues posed by the NPRM. Part I addresses the "transition" issues that may arise if competition in fact develops in the exchange services market. In particular, it shows that there is no immediate need or justification for considering significant relaxation of price cap requirements on this basis for the foreseeable future. Until objective criteria demonstrating the existence of actual and meaningful local exchange and access competition can be satisfied, the Commission should maintain relatively detailed price cap controls and procedures to ensure the reasonableness of interstate access rates and to achieve the Commission's stated objectives.

Part II responds to the "baseline" issues raised in the NPRM. With actual experience under price cap regulation, it is now apparent that the price cap index adjustment formulas should be revised in order to achieve more fully the original promise of the LEC price cap plan.⁸ Among other necessary revisions to the baseline formulas, actual LEC performance confirms that

⁸ Price cap regulation of carriers with conceded monopoly power was designed to produce rates that would be lower than under continued rate of return regulation, with consumers sharing in the increased efficiencies anticipated from the incentives provided by direct control of prices rather than profits. See, e.g., NPRM, ¶¶ 11-13.

the current productivity factors understate the LECs' inherent potential for and achievement of higher efficiency. As the NPRM (§ 45) correctly anticipates, there is "a good case for revising the 3.3 percent and 4.3 percent productivity factors. . . ." Similarly, owing to the "unique characteristics of the carrier common line charge" (NPRM, § 56), the Commission should reexamine its compromise adoption of the "Balanced 50/50 formula" because "there is no rational basis for awarding half the benefits in demand growth to the LECs" that this formula permits. Id., § 57. Additionally, the Commission should order exogenous cost adjustments in the LECs' price caps to reflect appropriately the reduction since 1991 in the economy-wide cost of capital.

I. THE CURRENT STRUCTURE OF PRICE CAP REGULATION NEED NOT BE REVISED WHILE NO EFFECTIVE COMPETITION EXISTS FOR EXCHANGE ACCESS SERVICES.

The NPRM raises a number of issues regarding the current state of competition in the local exchange and whether and how the Commission should modify price cap regulation if such competition develops. See NPRM, §§ 92-100. These questions seek comment on whether competition currently exists in the local market; how the Commission will be able to determine if competition has in fact developed; and how the Commission should modify the LEC price cap plan when and if exchange competition evolves.

As a threshold matter, it is important to recognize that there is no necessary link between the existence of competition and the use of incentive regulation. Incentive regulation can be successful in a monopoly environment. Indeed, AT&T supported, and the Commission adopted, a price cap plan for LECs in 1990, despite the widely acknowledged absence at that time of any effective competition in local exchange and access services. And AT&T remains committed to the superiority of price caps over a rate of return approach, without regard to competitive conditions. But to the extent that competition, or even potential competition, for exchange services could someday warrant incremental changes in the LEC price cap rules, any change in incentive regulation on that basis today is clearly premature.

The NPRM (§ 92) notes that price cap constraints "may become unnecessary or counterproductive when market forces generated by competition effectively assure reasonable, and not unreasonably discriminatory rates," and, for that reason, "[i]n the case of AT&T . . . price caps proved to be a transitional form of regulation for many services." As a theoretical matter, the same may hold true as to the LECs' interstate access services, but such a decision can be made only when proof of actual customer choice and competition equivalent or comparable to that in the interexchange market can be demonstrated. Although there may be some potential for

competition in the local exchange, LECs retain virtually complete control of their local bottlenecks.

There is some possibility, however, that competition could develop in the local exchange if the proper conditions are created. The NPRM asks how the Commission "will be able to identify" the circumstances in which "a LEC no longer control[s] essential 'bottleneck' facilities for some or all of its services." NPRM, ¶ 95 (Transition Issue 1c). AT&T has previously suggested certain measures that the Commission could use to evaluate the degree of competition. More recently AT&T has also identified certain essential preconditions to testing the potential creation of local competition. Only after the Commission verifies that competition is feasible and has in fact developed should it consider streamlining LEC price cap regulation on the basis of competitive criteria.⁹

⁹ The NPRM (¶ 99, Transition Issue 5) asks "[w]hen should the Commission next review the price cap LECs' performance." On the basis of the same considerations that led to the current four-year review period (see LEC Price Cap Order, 5 FCC Rcd. at 6834 (¶¶ 385-388)), the next review should be scheduled four years from the implementation of changes ordered as a result of the instant review.

A. The LECs Still Retain Their Bottleneck Monopolies.

As the NPRM recognizes, "[t]he LECs currently dominate the provision of access services." NPRM, ¶ 94.¹⁰ No one can seriously dispute this conclusion. Indeed, the only actual exchange competition faced by the incumbent LEC today comes from CAPs. But CAPs account for only a tiny percentage of the access market, and do not compete at all in the local exchange calling business. The NPRM itself acknowledges (¶ 22 n.15) that the three largest CAPs accounted for less than \$500 million of alternative access service revenues in 1992. Although AT&T estimates that CAPs account for less than one percent of the nationwide access revenues, even the Commission's data suggest that CAPs account for less than 2 percent of the \$29 billion access market.

Moreover, CAPs face inherent limitations that make it unlikely for them to expand significantly beyond this tiny percentage. CAPs' services are limited almost exclusively to dedicated, high capacity access services, provided to a limited number of buildings in the nation's largest cities. The investments required to extend

¹⁰ As Assistant Attorney General Bingaman recently explained, "the local telephone company still handles about 99% of the local traffic." Antitrust and Innovation in a High Technology Society, Address by the Honorable Anne K. Bingaman, Assistant Attorney General, Antitrust Division, U.S. Department of Justice, January 10, 1994, p. 10.

service to any individual building are so high that, even now, CAPs serve fewer than 3000 buildings in the entire country. CAPs thus can realistically provide service to just a small number of customers with sufficient volumes of traffic to justify the expense of alternative access service. In addition, CAPs provide only a limited portion of access transport services and rely on the LECs for switching and distribution, even where they have obtained appropriate interconnection. They do not provide a full end-to-end alternative to the incumbent LEC. Because of these inherent limitations, CAPs do not provide an option for the vast majority of customers, nor will they in the foreseeable future. See, e.g., Economics and Technology, Inc. and Hatfield Associates, Inc., The Enduring Local Bottleneck: Monopoly Power and the Local Exchange Carriers, pp. 31-32 (February 1994) ("The Enduring Local Bottleneck").

As AT&T has demonstrated,¹¹ conventional cellular service does not compete with the landline network.¹² Indeed, some 99 percent of all calls

¹¹ See United States v. Western Electric Co., Civ. No. 82-0192 (D.D.C.), AT&T's Opposition to RBOCs' Motion to "Exempt" Wireless Services from Section II of the Decree, pp. 16-33 (filed April 27, 1992).

¹² LECs have also acknowledged that cellular and local exchange services are distinct. See, e.g., PacTel Reply Comments in CC Docket No. 91-141, Phase 2, filed April 30, 1993, p. 25.

originated on cellular systems require the landline network either to complete the call or to provide access to interexchange carrier networks.¹³ In addition, cellular service costs considerably more than traditional phone service, and cellular therefore does not compete with wireline service.¹⁴

Similarly, other wireless technologies do not currently compete meaningfully with the local landline network. Clearly, it is far too early to tell whether personal communications systems ("PCS") will provide any meaningful competition. It is likely it will be years before commercial PCS service is initially offered. Even then, and although PCS "may provide additional competition" when deployed (NPRM, ¶ 93), it appears that PCS, like cellular phones, will use the landline network for completion of most calls. Thus, rather than competing with the local exchanges, PCS may actually be

¹³ Even the one percent of calls that do begin and end on a cellular system almost always require the LEC system for some or all of the intrasystem (MTSO to cell site) links.

¹⁴ See United States v. Western Electric Co., Civ. No. 82-0192 (D.D.C.), Reply of the Bell Companies in Support of Their Motion for Removal of Mobile and Other Wireless Services from the Scope of Section II of the Decree, p. 38 n.48 (filed with DOJ Aug. 3, 1992) (acknowledging that cellular service is not a substitute for landline service "as a matter of commercial reality").

dependent on the local exchanges in much the same way that PBXs -- or cellular systems -- are.¹⁵

Cable telephony also is, at best, years away. Simply put, no cable operator offers any service that is a substitute for traditional exchange telephone service anywhere in the United States today. Moreover, upgrading existing domestic cable systems to provide telephony is a lengthy and expensive process, and thus cannot be considered a current competitive alternative to LEC exchange facilities.¹⁶

Finally, although the expanded interconnection established by recent Commission actions is a positive initial step toward creating the possibility of competition in some segments of the local exchange network,¹⁷ it is merely a necessary but not sufficient precondition for the development of local exchange competition. See Section I.B, infra. The expanded interconnection orders effectively address only one aspect of the local exchange -- transport services. Even

¹⁵ See The Enduring Local Bottleneck, pp. 79-80.

¹⁶ See The Enduring Local Bottleneck, pp. 151-52.

¹⁷ Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd. 7369 (1992) ("Expanded Interconnection Order"), recon., 8 FCC Rcd. 127 (1992), on further recon., 8 FCC Rcd. 7341 (Sept. 2, 1993), appeal pending sub nom. Bell Atlantic Corp. v. FCC, No. 92-1619 (D.C. Cir., filed Nov. 25, 1992).

as to this segment of the local exchange business, it is too early to tell whether effective and widescale access competition can develop -- even apart from the resistance generated by the LECs, many of whom have challenged the expanded interconnection orders as unconstitutional.¹⁸ If the Commission's orders are upheld, expanded interconnection will be a promising step, but even if implemented, these orders would not themselves achieve full and effective local competition.

These findings are confirmed by the study reported in The Enduring Local Bottleneck. In this report, several researchers have analyzed the state of competition in the local exchange and concluded that "little if any competition has emerged in . . . the local exchange and access markets." See The Enduring Local Bottleneck, p. 5. Moreover, any competitive entry that does develop in the next decade is "unlikely to be sufficient to eliminate or even significantly reduce the control of essential facilities by the BOCs." Id. at 4. Therefore, even though the potential exists for some forms of limited competition in the local exchanges, it

¹⁸ Id. See FCC's Physical Collocation Requirement Attacked in Oral Argument as Unlawful 'Taking of Property', Telecommunications Reports, pp. 1-3 (February 28, 1994) ("Following the oral argument, observers predicted that the court would vacate the FCC's physical collocation requirement as unlawful").

is clear that the LECs will not lose control of their bottleneck monopolies any time soon.

B. The Commission Should Encourage The Development Of Competition In The Local Market, And Streamline LEC Regulation Only When Actual Competition Is Achieved.

Recognizing that the LECs still maintain their monopoly power over the local bottleneck, the NPRM inquires how the Commission might determine when sufficient competition has developed so that LEC regulation may be streamlined or relaxed. Specifically, the NPRM seeks comment on "[w]hat criteria if any should be used for determining when reduced or streamlined regulation for price cap LECs should take effect." NPRM, ¶ 95 (Transition Issue 1b).¹⁹ Related transition issues

¹⁹ As to this question, the Commission identifies (*id.*) a number of potential factors for "determining whether a service is subject to sufficient competition to be moved from price cap regulation to reduced or more streamlined regulation," including "(1) the nature and extent of any barriers to entry and exit (*e.g.*, regulatory, economic, or technological obstacles), (2) the existence of potential and actual competitors and, if so, what role should the existence of actual competition play in determining whether to reduce or streamline LEC price cap regulation, (3) the extent to which those competitors have the facilities to serve LEC customers, (4) the willingness of customers to use competitors' services and, if so, how should this criterion be measured, (5) the competitors' market share and, if so, how should the term market be defined, (6) pricing trends, (7) the effect of expanded interconnection, (8) differences in competition in different geographic locations or regions, and differences in demographic characteristics, such as whether services are

seek comment on "[i]n what circumstances will a LEC no longer control essential 'bottleneck' facilities for some or all of its services," and "[h]ow will the Commission be able to identify these circumstances in practice." NPRM, ¶ 95 (Transition Issue 1c).

Determining whether competition has in fact developed for exchange access services will not be a simple matter. For one, only recently have some limited steps been taken to address the various legal and economic barriers that restrict or preclude competitive local entry.²⁰ Because the necessary conditions for testing the possibility of local competition do not yet exist, such competition has no prior track record.

Moreover, it is not clear whether competition is achievable even if the best possible environment for its development is created. The terms of the decree which required the divestiture of the Bell System were expressly based on the finding that the LEC exchanges are

(footnote continued from previous page)

available to all groups within a broad community or area, and (9) other factors."

²⁰ Many states still prohibit exchange competition by statute or by regulatory rule. While some states are beginning to unbundle the local exchange and are permitting competition, many LECs are vigorously resisting such efforts.

natural monopolies, and the validity of that finding has yet to be tested, much less disproved.²¹

Thus, before establishing specific criteria to measure competition which has yet to develop, AT&T supports the prompt adoption of regulatory changes that will meaningfully test whether such competition is feasible. Wholly apart from any possible linkage to streamlined regulatory treatment of the LECs, such local competition has the potential to afford customers the benefits of reduced prices, new and innovative technologies, improved service quality, and a wider choice of service options.²²

AT&T has identified nine specific steps that should be taken to create the essential conditions under which exchange and exchange access competition can best develop, as follows:

²¹ United States v. Western Elec. Co., 673 F. Supp. 525, 537 (D.D.C. 1987) (finding that the RBOCs' control of the local exchange networks constituted a "natural monopoly"); see also The Enduring Local Bottleneck, p. 4.

²² Indeed, for these reasons AT&T has already recently requested the Illinois Commerce Commission to establish conditions to determine if effective local competition is feasible in most of that state. See Petition of AT&T Communications of Illinois, Inc. for an Investigation and Order Establishing Conditions Necessary to Permit Effective Exchange Competition to the Extent Feasible in Areas Served by Illinois Bell, No. 94-0146, filed April 11, 1994 (Ill. Comm. Comm'n).

- State franchise restrictions, which are often statutory, should be eliminated so that any potential competitor can enter the local exchange market.

- Exclusive LEC control of conduits and rights of way should also be eliminated. For meaningful exchange competition to develop, competitors must be given access on the same terms and conditions as the LECs.

- Basic network functions should be unbundled. Competition can only develop if potential competitors are not forced to incur the costs of unnecessary local exchange functions that the LEC bundles together with functions that the competitor must use to create a marketable service. Unbundling should extend both to basic network functions ("BNFs") -- discrete network components that could, if economically feasible, be provided on a stand-alone basis by a competitor -- and other basic network elements ("BNEs") that would enhance competitive opportunities even though they could not be provided on a stand-alone basis.

- Unbundling should be coupled with full interconnection rights. Competitors should be granted the right to nondiscriminatory provisioning as well as physical collocation with LEC facilities. In addition, interconnection should be equal in all respects to the interconnection LECs provide to themselves.

- LECs should have a duty to furnish these unbundled functions upon reasonable request and pursuant to uniform technical standards. Such uniform standards should include the use of nationwide, standardized interfaces. Otherwise, those network components will be of little use to potential competitors.

- Use and user restrictions should be eliminated. Competitors should have the right to resell service. Resale and sharing reduce capital costs for potential entrants and allow them to search out and capitalize on non-cost-based price differentials.

- LECs should be required to charge non-discriminatory rates for unbundled functions.

- For BNFs and BNEs, LECs should be required to charge -- both to itself and its customers -- at least the total service long run incremental costs, plus a pro-rata share of common costs where appropriate.

- Number portability should be established. Local competition will never develop satisfactorily if customers must change phone numbers in order to choose a competitor to the entrenched LEC. Furthermore, administration of the North American Numbering Plan should be vested in an impartial body open to all interested parties, including federal and state governments.

If the foregoing conditions are in place, and if it is demonstrated that competition has in fact developed, only then should the Commission consider what is an appropriate measure of the extent and viability of such competitive entry.²³ In this regard, AT&T has previously suggested a set of measurement criteria or "metrics" to determine whether effective competition appears to be occurring in the local exchange market. Chief among these metrics is the requirement that at least 30 percent of subscribers in an area are in fact using alternative providers for local telephone service.²⁴ Other measures of actual local exchange

²³ See Transition Issue 1b, item 3 ("the extent to which [the LECs'] competitors have the facilities to serve LEC customers") (NPRM, ¶ 95); id., item 4 ("the willingness of customers to use competitors' services and, if so, how should this criterion be measured").

²⁴ See, e.g., AT&T Comments filed June 11, 1993 in Petition for a Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, DA 93-481. AT&T's proposed metrics also provide that such service must be comparable in quality, coverage, price and capability to that of the incumbent LEC, and that it must be available from two or more alternative providers who are not dependent on the LEC for the facilities used to provide service. A suggested benchmark would be whether at least 75